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9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ROBERT P. CRAWFORD II, as Personal
13 Representative to the Estate of GAIL
14 HAHN, CHAILLE DUNCAN, and
ALEXIS HERNANDEZ, individually and
15 on behalf of all other similarly situated
California Residents,

16 Plaintiffs,

17 v.

18 MASSAGE ENVY FRANCHISING,
19 LLC, a Delaware Limited Liability
Company,

20 Defendant.
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Case No. 3:12-cv-00153-DMS-BGS

JOINT NOTICE OF DISMISSAL
WITHOUT PREJUDICE OF "CURRENT
MEMBER" CLAIMS

Fed. R. Civ. P. 41(a)(1)

1 The parties hereto, by and through their respective counsel of record, hereby
2 stipulate and agree as follows:

3 WHEREAS, in connection with an earlier proposed class action settlement in
4 this case (the “Original Settlement”),¹ Robert P. Crawford, as Personal
5 Representative to the Estate of Gail Hahn, Alexis Hernandez and Chaille Duncan
6 (collectively the “Representatives”) filed a Second Amended Complaint (the “SAC”)
7 against Defendant Massage Envy Franchising, LLC (“MEF” collectively the
8 “Parties”);

9 WHEREAS, the SAC was deemed filed by the Court’s March 6, 2015 Order
10 preliminarily approving the Original Settlement. Dkt. No. 303, at p. 19:1-3;

11 WHEREAS, the SAC asserts nationwide claims on behalf of “SAC Members”
12 which includes “Former Members” as well as all “Current Members” of MEF
13 Franchises;

14 WHEREAS, the Parties have reached an agreement (the “Amended Settlement
15 Agreement”) resolving all of the claims and causes of action asserted in this case on
16 behalf of Former Members pled in the SAC;

17 WHEREAS, as a material term of the Amended Settlement Agreement, the
18 Parties have agreed to dismiss the claims of “Current Members” from the
19 Representatives’ SAC:

20 NOW THEREFORE, the Parties, by and through their respective counsel,
21 hereby stipulate that all claims and causes of action of the “Current Members” as
22 pled in the SAC be dismissed pursuant to Fed. R. Civil. P. 41(a)(1) without
23 prejudice.

24 Fed. R. Civ. P. 41(a)(1)(A)(ii) allows a plaintiff to voluntarily dismiss an
25 action without court order by filing a stipulation of dismissal signed by all parties
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27 ¹ Unless otherwise noted, capitalized terms have the same meaning as the Amended Settlement
28 Agreement.

1 who have appeared. See *Duke Energy Trading & Mktg. v. Davis*, 267 F.3d 1042,
 2 1049 (9th Cir. 2001) (noting that voluntary dismissal under Rule 41(a)(1)(A)
 3 “requires no action on the part of the court”).

4 Rule 41(a)(1)(A) is expressly subject to the provisions of Fed. R. Civ. P. 23(e),
 5 which was modified in 2003 to eliminate any requirement for Court approval or
 6 notice to the putative class when a class representative voluntarily dismisses class
 7 allegations without prejudice before a ruling on class certification:

8 Rule 23(e)(1)(A) resolves the ambiguity in former Rule
 9 23(e)’s reference to dismissal or compromise of “a class
 10 action.” That language could be—and at times was—read
 11 to require court approval of settlements with putative class
 12 representatives that resolved only individual claims.
 13 [Citation.] The new rule requires approval only if the
 14 claims, issues, or defenses of a certified class are resolved
 15 by a settlement, voluntary dismissal, or compromise.
 16 Subdivision (e)(1)(B) carries forward the notice
 17 requirement of present Rule 23(e) when the settlement
 18 binds the class through claim or issue preclusion; notice is
 19 not required when the settlement binds only the individual
 20 class representatives.

21 Committee Notes on Rules—2003 Amendment (emphasis added); *see also*
 22 *Jackson v. Innovative Sec. Servs., LLC*, 283 F.R.D. 13, 15 (D.D.C. 2012) (“The
 23 purpose of Rule 23(e) is to protect the rights of nonparty members of the class...
 24 However, this matter was never certified pursuant to Rule 23(b)(2). As such,
 25 plaintiffs’ request for dismissal of the class action claim is appropriate under
 26 Federal Rule 41(a)(1).”); *Wynn v. Nat’l Broad. Co.*, No. CV00-11248-SVW(RZX),
 27 2002 WL 31681865, at *1 (C.D. Cal. Mar. 6, 2002) (dismissing action under Rule
 28 41(a)(1)(A) and ruling over defendant’s objection that “no approval is required by
 the Court pursuant to Rule 23(e), since there is no certified class action at this
 point”). Accordingly, voluntary dismissal of the Current Members’ causes of
 action does not require Court approval because they are not part of a certified class

1 at this time. *See* Dkt. 381, at p. 14:21-23 (decertifying class including Current
2 Members).

3 Finally, even if Court approval were required, dismissal of the Current
4 Members' causes of action will have no prejudicial effect. The dismissal without
5 prejudice will have no preclusive effect on Current Members' claims, and the
6 Current Members now assert causes of action on their own behalf in the related
7 litigation, *Donna Zizian, Individually and on behalf of all other similarly situated*
8 *California Residents, v. Massage Envy Franchising, LLC, a Delaware limited*
9 *liability company*, Case No. 3:16-cv-00783-DMS (BGS).

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11 Date: June 3, 2016

Respectfully submitted,

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13 FINKELSTEIN & KRINSK LLP

14 By: /s/ Jeffrey R. Krinsk

15 Jeffrey R. Krinsk, Esq.
16 William R. Restis, Esq.
17 Trenton R. Kashima, Esq.
David J. Harris, Esq.

18 Attorneys for Plaintiffs and
19 the Settlement Class

20 SACKS, RICKETTS & CASE, LLP

21 By: /s/Cynthia A. Ricketts

22 Luanne Sacks
23 Cynthia A. Ricketts

24 Attorneys for Defendant
25 Massage Envy Franchising, LLC
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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Cindy Ricketts, counsel for MEF, and that I have obtained Ms. Ricketts', authorization to affix her electronic signature to this document.

Dated: June 3, 2016

By: /s/ Jeffrey R. Krinsk

Jeffrey R. Krinsk, Esq.